

ORIGINAL

COMMISSIONERS
GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

MEMORANDUM

TO: Gary Pierce, Chairman
Bob Stump
Sandra D. Kennedy
Paul Newman
Brenda Burns

FROM: Matthew J. Neubert *mjn*
Director of Securities

DATE: March 30, 2012

RE: *In re the matter of Kent M. Axtell, et al.*, Docket No. S-20803A-11-0187

CC: Ernest G. Johnson, Executive Director



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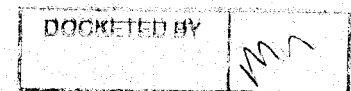
SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 388-1335
E-MAIL: securitiesdiv@azcc.gov



Arizona Corporation Commission

DOCKETED

MAR 30 2012



Attached for your consideration is a proposed Order To Cease And Desist, Order For Administrative Penalties and Consent to Same executed by Kent M. Axtell ("K. Axtell"), individually and doing business as Sherlock Homes and Finding Homes for Investors, and Executive Real Estate Solutions, L.L.C., an Arizona limited liability company ("Respondents"); and Janice C. Axtell ("J. Axtell") ("Consent Order").

The Consent Order finds that from 2002 through 2010, Respondents raised at least \$1,205,919 from at least 26 investors residing in Arizona and other states in connection with their business of buying and selling real estate located in Arizona. In exchange for the funds received, Respondents provided investors with promissory notes, some of which were collateralized by deeds of trust. The Consent Order further finds that Respondents violated A.R.S. §§ 44-1841 and 44-1842 by offering and selling unregistered securities while being unregistered as dealers or salesmen and that the Respondents violated the anti-fraud provisions of A.R.S. § 44-1991.

The Consent Order requires (a) Respondents to permanently cease and desist from violating the Securities Act; and (b) Respondents and the marital community of K. Axtell and J. Axtell, jointly and severally, to pay restitution in the amount of \$1,142,747 and a \$75,000 administrative penalty. The Division believes that this Consent Order is appropriate to protect the public welfare.

Originator: Julie A. Coleman

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 GARY PIERCE, Chairman
5 BOB STUMP
6 SANDRA D. KENNEDY
7 PAUL NEWMAN
8 BRENDA BURNS

9 In the matter of :

10 KENT M. AXTELL, individually and doing
11 business as Sherlock Homes and Finding
12 Homes for Investors, and JANIS C.
13 AXTELL, husband and wife,

14 EXECUTIVE REAL ESTATE
15 SOLUTIONS, L.L.C., an Arizona limited
16 liability company,

17 Respondents.

) DOCKET NO. S-20803A-11-0187

) DECISION NO. _____

) **ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY RESPONDENTS:**

) **KENT M. AXTELL**

) **JANIS C. AXTELL**

) **EXECUTIVE REAL ESTATE SOLUTIONS,
L.L.C.**

18 Respondent KENT M. AXTELL, individually and doing business as Sherlock Homes and
19 Finding Homes for Investors, and Respondent EXECUTIVE REAL ETATE SOLUTIONS, L.L.C.,
20 an Arizona limited liability company ("Respondents"); and JANICE C. AXTELL ("Respondent
21 Spouse") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of
22 the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order
23 To Cease And Desist, Order for Restitution, Order for Administrative Penalties and Consent to
24 Same. Respondents and Respondent Spouse admit the jurisdiction of the Arizona Corporation
25 Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law
26 contained in this Order; and consent to the entry of this Order by the Commission.

I.**FINDINGS OF FACT**

1. At all times relevant, KENT M. AXTELL ("AXTELL"), individually and doing business as Sherlock Homes and Finding Homes for Investors, was an Arizona resident residing in Scottsdale, Arizona.

2. According to the records of the Arizona Corporation Commission, EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C., was established on November 4, 2009. AXTELL is a member of EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C.

3. JANIS C. AXTELL was at all relevant times the spouse of Respondent KENT M. AXTELL. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

4. At all times relevant, AXTELL was acting for his own benefit and for the benefit or in furtherance of his and Respondent Spouse's marital community.

5. From 2002 to 2010, Respondents represented to investors that Respondents were in the business of buying and selling real estate located in Arizona. According to promotional materials supplied to investors by Respondents, Respondents sought investors to provide investment funds to be used by Respondents to "purchase homes below market in the Greater Phoenix area." According to Respondents, after a brief clean up, the homes would then be sold by Respondents to "fix-up investors" who would then upgrade and resell the properties at a profit.

6. Respondents used various forms of advertising to attract investors, including placement of signs along roadways, delivering flyers door to door within certain communities and placing advertisements in the Arizona Republic newspaper. One representative advertisement was as follows:

Funds for Buying Houses
Will pay 16% to 18%, 1 to 2 yrs. Involvement welcomed.
Call Kent 602 315 1995

7. Another advertisement placed in the newspaper was as follows:

1 **Now that I've got this money,**
2 **WHAT DO I DO WITH IT?**
3 **(OK for IRA & 401k) I have an answer that's both profitable & safe Call Kent 602-290-8910**

4 8. Respondents explained to investors that their "transactions cycle" was short due to a
5 high client demand for "fix-up" homes. According to Respondents, this meant that the money
6 received from investors would be used to make "purchases several times each year," allowing
7 Respondents to pay high fixed interest rates to investors.

8 9. In some instances, Respondents also promised investors rates of return dependent, in
9 part, upon how much was invested. For example, for amounts invested up to \$50,000, investors
10 were to earn 10%. For amounts invested above \$50,000, but less than \$300,000, investors were to
11 earn 12%. For amounts invested above \$300,000, investors were to earn 13.5%. Respondents
12 represented to investors that interest payments would be made quarterly.

13 10. Respondents represented to investors that they possessed a five-year track record
14 involving over \$19,000,000 in property purchases consisting of over 60 individual transactions and
15 that AXTELL had been buying and selling real estate for approximately 40 years.

16 11. Promotional materials supplied to investors by Respondents represented that
17 investors would be secured with a collateral assignment, for the amount invested, of a sizable life
18 insurance policy owned by AXTELL.

19 12. Respondents were responsible for all material aspects involved in managing the
20 investment including locating properties to be purchased, cleaning up and refurbishing the
21 properties once purchased, determining the value of the properties, attracting potential buyers, and
22 arranging for the handling of all aspects related to the sale of the properties.

23 13. Investors had no involvement in the investment beyond providing their investment
24 funds to Respondents.

25 14. Respondents profited from the sale of properties by retaining the difference between
26 the sale price of the properties less the expenses incurred to prepare the property for resale and
interest payments made to investors.

1 15. Investors provided their investment funds directly to Respondents who deposited the
2 funds into a bank account containing funds received from other investors. One such account was
3 titled "Investment Account." From these accounts containing the funds of various investors,
4 Respondents bought and sold real estate.

5 16. In exchange for their investment, Respondents provided investors with various
6 forms of documentation. Some investors were provided with a document titled "Standard
7 Notarized Promissory Note" or "Promissory Note" (collectively referred to as "Notes"). In other
8 instances, investors were provided with a document titled "Real Estate Investment Agreement."
9 The Notes and the Real Estate Investment Agreements were executed by AXTELL. In addition,
10 some of the Notes and Real Estate Investment Agreements included the personal guaranty of
11 AXTELL.

12 17. Some investors were provided with a "Real Estate Investment Agreement" that
13 included a provision securing the amount invested with a deed of trust recorded against real estate
14 and further set forth that if funds were reinvested with interest when the property sold, a
15 reinvestment bonus of \$200 would be added to the investment funds in addition to the interest
16 accrued.

17 18. In at least one instance, Respondents failed to record a deed of trust presented to an
18 investor for a specific property to secure the amount invested.

19 19. In at least one instance, Respondents used funds received from an investor to repay
20 to another investor their principal investment amount.

21 20. Beginning in 2002 and continuing to 2010, Respondents raised at least \$1,205,919
22 from at least 26 investors residing throughout Arizona and other states in connection with their
23 business of buying and selling real estate located in Arizona.

24 21. Respondents have defaulted on their obligations to investors and ceased making
25 interest payments.

26 22. On June 20, 2010, AXTELL filed a Chapter 7 bankruptcy petition in the U.S.

1 Bankruptcy Court, District of Arizona (*See*, Case No. 2:10-bk-19284-RJH). On March 10, 2011,
2 AXTELL was granted a discharge.

3 23. The investments described above have not been registered as securities with the
4 Commission to be offered and sold within or from Arizona.

5 24. Respondents have not been registered as securities dealers or salesmen.

6 II.

7 CONCLUSIONS OF LAW

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
9 Arizona Constitution and the Securities Act.

10 2. Respondents offered or sold securities within or from Arizona, within the meaning
11 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

12 3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were
13 neither registered nor exempt from registration.

14 4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while
15 neither registered as dealers or salesmen nor exempt from registration.

16 5. Respondents violated A.R.S. § 44-1991 by making untrue statements or misleading
17 omissions of material facts.

18 6. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.
19 § 44-2032.

20 7. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
21 2032.

22 8. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-
23 2036.

24 9. Respondent AXTELL acted for the benefit of his marital community and, pursuant
25 to A.R.S. §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of
26 the community.

10. Respondent AXTELL, directly or indirectly controlled Respondent EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C., within the meaning of A.R.S. § 44-1999, and therefore AXTELL is jointly and severally liable with, and to the same extent as, EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C., for its violations of the anti-fraud provisions of the Securities Act.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents and any of Respondents' agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents KENT M. AXTELL and EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C., individually, and the marital community of Respondent KENT M. AXTELL and Respondent Spouse JANICE C. AXTELL, shall, jointly and severally, pay restitution to the Commission in the principal amount of \$1,142,747. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. Any principal amount outstanding shall accrue interest at the rate of 5 percent per annum from the date of this Order until paid in full.

The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an

1 investor because the investor is deceased and the Commission cannot reasonably identify and
2 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
3 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
4 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
5 shall be transferred to the general fund of the state of Arizona.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 that Respondents KENT M.
7 AXTELL and EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C., individually, and the marital
8 community of Respondent KENT M. AXTELL and Respondent Spouse JANICE C. AXTELL,
9 shall, jointly and severally, pay an administrative penalty in the amount of \$75,000. Payment is
10 due in full on the date of this Order. Payment shall be made to the "State of Arizona." Any
11 amount outstanding shall accrue interest from the date judgment is entered at the rate of 5 percent
12 per annum.

13 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
14 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
15 shall be applied to the penalty obligation.

16 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
17 Commission may bring further legal proceedings against that Respondent, including application to
18 the superior court for an order of contempt.

19 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this
20 Order shall be deemed binding against any Respondent under this Docket Number who has not
21 consented to the entry of this Order.

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23 ...

24 ...

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation
Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the Capitol,
in the City of Phoenix, this _____ day
of _____, 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(JC)

CONSENT TO ENTRY OF ORDER

1
2 1. KENT M. AXTELL, individually and doing business as Sherlock Homes and
3 Finding Homes for Investors and EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C., an Arizona
4 limited liability company ("Respondents"); and JANICE C. AXTELL, spouse of KENT M .
5 AXTELL, ("Respondent Spouse") admit the jurisdiction of the Commission over the subject matter
6 of this proceeding. Respondents and Respondent Spouse acknowledge that they have been fully
7 advised of their right to a hearing to present evidence and call witnesses and Respondents and
8 Respondent Spouse knowingly and voluntarily waive any and all rights to a hearing before the
9 Commission and all other rights otherwise available under Article 11 of the Securities and Title 14
10 of the Arizona Administrative Code. Respondents and Respondent Spouse acknowledge that this
11 Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to
12 Same ("Order") constitutes a valid final order of the Commission.

13 2. Respondents and Respondent Spouse knowingly and voluntarily waive any right
14 under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or
15 extraordinary relief resulting from the entry of this Order.

16 3. Respondents and Respondent Spouse acknowledge and agree that this Order is
17 entered into freely and voluntarily and that no promise was made or coercion used to induce such
18 entry.

19 4. Respondents and Respondent Spouse acknowledge that they have been represented
20 by an attorney in this matter, Respondents and Respondent Spouse have reviewed this Order with
21 their attorney, Jeffrey M. Proper, and understand all terms it contains. Respondents and Respondent
22 Spouse acknowledge that their attorney has apprised them of their rights regarding any conflicts of
23 interest arising from dual representation. Respondents and Respondent Spouse acknowledge that
24 they have each given their informed consent to such representation.

25 5. Respondents and Respondent Spouse neither admit nor deny the Findings of Fact
26 and Conclusions of Law contained in this Order. Respondents and Respondent Spouse agree that

1 they shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this
2 Order in any present or future proceeding in which the Commission or any other state agency is a
3 party concerning the denial or issuance of any license or registration required by the state to engage
4 in the practice of any business or profession.

5 6. By consenting to the entry of this Order, Respondents and Respondent Spouse
6 agrees not to take any action or to make, or permit to be made, any public statement denying,
7 directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the
8 impression that this Order is without factual basis. Respondents will undertake steps necessary to
9 assure that all of Respondent's agents and employees understand and comply with this agreement.

10 7. While this Order settles this administrative matter between Respondents and
11 Respondent Spouse and the Commission, Respondents and Respondent Spouse understand that this
12 Order does not preclude the Commission from instituting other administrative or civil proceedings
13 based on violations that are not addressed by this Order.

14 8. Respondents and Respondent Spouse understand that this Order does not preclude
15 the Commission from referring this matter to any governmental agency for administrative, civil, or
16 criminal proceedings that may be related to the matters addressed by this Order.

17 9. Respondents and Respondent Spouse understand that this Order does not preclude
18 any other agency or officer of the state of Arizona or its subdivisions from instituting
19 administrative, civil, or criminal proceedings that may be related to matters addressed by this
20 Order.

21 10. Respondents agree that Respondents will not apply to the state of Arizona for
22 registration as a securities dealer or salesman or for licensure as an investment adviser or
23 investment adviser representative until such time as all restitution and penalties under this Order are
24 paid in full.

25 11. Respondents agree that Respondents will not exercise any control over any entity
26 that offers or sells securities or provides investment advisory services within or from Arizona until

such time as all restitution and penalties under this Order are paid in full.

12. Respondent KENT M. AXTELL and Respondent Spouse acknowledge that any restitution or penalties imposed by this Order are obligations of Respondent KENT M. AXTELL as well as the marital community of KENT M. AXTELL and Respondent Spouse.

13. Respondents and Respondent Spouse consent to the entry of this Order and agree to be fully bound by its terms and conditions.

14. Respondents and Respondent Spouse acknowledge and understand that if they fail to comply with the provisions of the order and this consent, the Commission may bring further legal proceedings against the Respondents and Respondent Spouse, including application to the superior court for an order of contempt.

15. Respondents and Respondent Spouse understand that default shall render Respondents, individually, and the marital community of KENT M. AXTELL and JANICE C. AXTELL liable to the Commission for its costs of collection and interest at the maximum legal rate.

16. Respondents and Respondent Spouse agree and understand that if they fail to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondents and Respondent Spouse agree and understand that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

17. KENT M. AXTELL represents that he is a member of EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C. and has been authorized by EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C. to enter into this Order for and on behalf of it.

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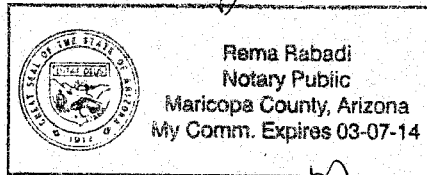
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Kent M. Axtell
KENT M. AXTELL, individually and doing
business as Sherlock Homes and Finding Homes
for Investors

Janice C. Axtell
JANICE C. AXTELL

STATE OF ARIZONA)
County of Maricopa) ss



SUBSCRIBED AND SWORN TO BEFORE me this 26 day of March, 2012.

Rema Rabadi
NOTARY PUBLIC

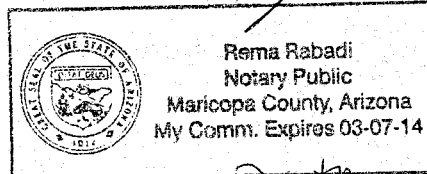
My commission expires:

03-07-2014

EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C.,
an Arizona limited liability company

By: Kent M. Axtell
KENT M. AXTELL

STATE OF ARIZONA)
County of Maricopa) ss



SUBSCRIBED AND SWORN TO BEFORE me this 26 day of March, 2012.

Rema Rabadi
NOTARY PUBLIC

My commission expires:

03-07-2014

1 SERVICE LIST FOR: In the Matter of: KENT M. AXTELL, individually and doing business as
2 Sherlock Homes and Finding Homes for Investors, and JANICE C. AXTELL, husband and wife,
and EXECUTIVE REAL ESTATE SOLUTIONS, L.L.C., an Arizona limited liability company

3 DOCKET NO. S-20803A-11-0187
4

5 Jeffrey M. Proper
Jeffrey M Proper PLLC
6 10645 N. Tatum Blvd., Suite C200-652
Phoenix, AZ 85028-3090
7 Attorney for Respondents
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE, Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 In the matter of)

9 KENT M. AXTELL, individually and doing)
10 business as Sherlock Homes and Finding Homes)
11 for Investors, and JANIS C. AXTELL, husband)
12 and wife,)

13 EXECUTIVE REAL ESTATE SOLUTIONS,)
14 L.L.C. an Arizona limited liability company,)

15 Respondents.)
16)

DOCKET NO. S-20803A-11-0187

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

(Assigned to the Honorable Marc E. Stern)

17 Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order to Cease
18 and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same by
19 Respondents Kent M. Axtell, Janis C. Axtell, and Executive Real Estate Solutions, L.L.C. was
20 filed with the Arizona Corporation Commission's Docket Control.

21 Dated: 3/30/2012

By:



Julie A. Coleman

Chief Counsel of Enforcement

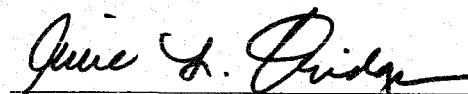
Attorney for the for the Securities Division of
the Arizona Corporation Commission

22 I hereby certify that I have this day served the foregoing document on all parties of record
23 in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

24 Jeffrey M. Proper
25 Jeffrey M. Proper, PLLC
26 10465 N. Tatum Blvd, Suite C200-652
Phoenix, AZ 85028

Dated: 3/30/12

By:



Emie R. Bridges, Executive Assistant